

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ARCADE JOSEPH COMEAUX, JR., §
(TDCJ-CID #841331) §
§
Plaintiff, §
§
vs. § CIVIL ACTION H-03-2555
§
DARRELL SUTTON, *et al.*, §
§
Defendants. §

ORDER

The appellant, Arcade Joseph Comeaux, has filed an application for leave to proceed *in forma pauperis* on appeal. On October 27, 2006, this court ordered Comeaux to provide a certified trust fund account statement or the equivalent. (Docket Entry No. 57). Comeaux complied on November 13, 2006. (Docket Entry No. 59).

A prisoner is not allowed to bring a civil action *in forma pauperis* in federal court if, while incarcerated, three or more of his civil actions or appeals were dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Before filing this action, Comeaux had at least one suit and two appeals dismissed as frivolous. *Comeaux v. Thaler*, Appeal No. 01-20584 (5th Cir.) (dismissed as frivolous on October 30, 2002); *Comeaux v. Cockrell*, 4:01-4265 (S.D. Tex.) (dismissed as malicious on December 28, 2001); *Comeaux*

v. Cockrell, Appeal No. 02-20444 (5th Cir.) (dismissed as frivolous and imposed a three-strikes bar on July 15, 2003).

In the present case, Comeaux acknowledges that he is barred by the three-strikes provision of 28 U.S.C. § 1915(g). (Docket Entry No. 54, p. 1). Comeaux alleges that when he filed this case, prison officials were refusing him necessary asthma medications as a form of retaliation. He complains that his elevated heart rate and decreased oxygen level places him at an increased risk of having a stroke and asserts that defendants are physically abusing him.

The pleadings allege that he is in imminent danger of serious physical injury. Accordingly, Comeaux is not barred under 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* in this appeal.

The court has considered Comeaux's application for leave to proceed *in forma pauperis* on appeal and the certified trust fund account statement or institutional equivalent.

It is ordered that:

1. Comeaux is assessed an initial partial filing fee of \$41.99. The agency having custody of Comeaux must collect this amount from the inmate's trust account when funds are available and forward it to the court.

2. Thereafter, Comeaux must pay \$413.01, the balance of the \$455.00 filing fee, in periodic installments as required by 28 U.S.C. § 1915(b)(2). This amount must be collected from the inmate's trust account and forwarded by the institution to the court.

3. The application for leave to proceed *in forma pauperis* on appeal under 28 U.S.C. § 1915, (Docket Entry No. 54), is granted.

4. The clerk must mail a copy of this order to the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629 and to TDCJ Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, Texas 78711, FAX: (512) 936-2159.

Based on the court's careful review of Comeaux's extensive, articulate pleadings in this court, Comeaux's motion for counsel on appeal, (Docket Entry No. 58), is denied at this time.

SIGNED on November 20, 2006, at Houston, Texas.



Lee H. Rosenthal
United States District Judge